

Agenda

Item #7



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

To: Commission Members

From: Jonathan Wayne, Executive Director

Date: January 22, 2009

Re: Two House Candidates with Excessive Campaign Spending:

- Frederick H. Austin (Agenda Item #7)
- Seth Yentes (Agenda Item #8)

In December 2008, the Commission staff was contacted by two House candidates who acknowledged that their publicly funded campaigns accidentally spent a greater amount than was permitted under the Maine Clean Election Act. In the case of Frederick Austin, he spent \$29.85 more than was allowed, and Seth Yentes spent \$51.80 more than was permitted. We asked both candidates to submit e-mailed explanations of how the overspending occurred.

As explained in my penalty notices to the two candidates, spending more than is permitted by the Maine Clean Election Act is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. The staff believes that some financial penalty is appropriate even in the case of small, unintentional overspending violations to underscore that it is an important responsibility of publicly financed candidates to keep their total spending within the legal limitation.

The staff accepts the candidates' explanations, and recommends the assessment of a \$50 civil penalty in both cases. That is the action that the Commission took regarding similar overspending violations committed by three candidates in the 2006, 2007 special, and 2008 primary elections. Mr. Austin has submitted an e-mail response to the proposed \$50 penalty arguing that it is too high in his case.

Thank you.



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December 23, 2008

Frederick H. Austin
11 Grove Street
Newport, ME 04953

Dear Mr. Austin:

Thank you for your e-mail dated December 9, 2008 regarding your total campaign spending for your 2008 campaign for Maine House of Representatives. After reviewing your post-general election campaign finance report, the staff of the Ethics Commission has made a preliminary finding that your 2008 campaign for House District #25 spent \$29.85 more than was permitted under the Maine Clean Election Act.

This is to notify you that at the January 29, 2009 meeting of the Ethics Commission, the staff will be recommending that the members of the Commission assess a civil penalty of \$50 against you for this violation. As explained below, you will have an opportunity to respond to the staff's preliminary finding of violation and proposed penalty in writing or at the meeting.

Limits on Spending by Maine Clean Election Act Candidates

After a candidate has qualified for Maine Clean Election Act funding, he or she may spend only public funds received from the state and authorized by the Commission:

After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. (21-A M.R.S.A. §1125(6))

Spending more than is permitted – which the Commission staff refers to as overspending – is potentially a serious election violation because it could give a candidate an unfair advantage and could possibly change the results of a close race. It is therefore important for Maine Clean Election Act candidates to keep track of their total expenditures and obligations to avoid exceeding the amount which they are authorized to spend.

Your Campaign Spending

Your 2008 campaign for the Maine House of Representatives was permitted to spend \$8,274.12.

Primary election payment on 4/16/08	\$512.00
General election payment on 6/11/08	\$4,144.00
Matching funds authorized to spend on 10/7/08	\$181.12
Matching funds authorized to spend on 10/26/08	\$1,475.46
Matching funds authorized to spend on 10/29/08	\$1,961.54
Total	\$8,274.12

Our understanding is that your campaign spent a total of \$8,303.97, which is \$29.85 more than was permitted by law.

Ethics Commission's Consideration of this Matter

At the January 29 meeting of the Commission, the staff will recommend that the Commission find that you violated 21-A M.R.S.A. § 1125(6) by spending money other than your Maine Clean Election Act funds to promote your campaign. We will also recommend that the Commission assess a penalty of \$50 against you. The recommended penalty is relatively small because the overspending apparently was unintentional and did not influence the outcome of the election. The January 29 meeting will begin at 9:00 a.m. and will be held in the hearing room of the Public Utilities Commission at 242 State Street in Augusta.

You may respond to the proposed penalty in writing or in person at the January 29 meeting. If we receive a written response by Monday, January 19, I will include the response in a packet of materials that is mailed to the Commission members in advance of the meeting. Please feel free to fax it to 287-6775 or e-mail it to me at Jonathan.Wayne@maine.gov. You are also welcome to respond to the proposed penalty by speaking to the Commission members in person at the meeting.

Please be aware that the Commission will have the discretion to assess a penalty that is greater or less than the staff recommendation, or to assess no penalty at all. Under 21-A M.R.S.A. § 1127(1), the Commission can assess a penalty of up to \$10,000 for a violation of the Maine Clean Election Act.

Please telephone me at 287-4179 if you have any questions.

Sincerely,



Jonathan Wayne
Executive Director

21-A MRSA § 1125. TERMS OF PARTICIPATION

...

6. Restrictions on contributions and expenditures for certified candidates. After certification, a candidate must limit the candidate's campaign expenditures and obligations, including outstanding obligations, to the revenues distributed to the candidate from the fund and may not accept any contributions unless specifically authorized by the commission. Candidates may also accept and spend interest earned on fund revenues in campaign bank accounts. All revenues distributed to a certified candidate from the fund must be used for campaign-related purposes. The candidate, the treasurer, the candidate's committee authorized pursuant to section 1013-A, subsection 1 or any agent of the candidate and committee may not use these revenues for any but campaign-related purposes. The commission shall publish guidelines outlining permissible campaign-related expenditures.

Wayne, Jonathan

From: O'Brien, Gavin
Sent: Monday, December 22, 2008 2:38 PM
To: Wayne, Jonathan
Subject: FW: My Clean Election ending finances problem: Frederick Austin House District #25
Attachments: scan0002.jpg

From: chip austin [mailto:ouray68@yahoo.com]
Sent: Tuesday, December 09, 2008 8:47 PM
To: Ethics Commission
Subject: Fw: My Clean Election ending finances problem: Frederick Austin House District #25

This is in regard to our conversation on Friday December 5, 2008 with Mr. O'brien. I am sending a copy of my bank statement.

On November 19 a check of \$4669.88 to the Clean Election Fund posted against my campaign bank account. I believed, in error I had around \$200 left in my account at that time.

On November 19 a check also posted for \$68.57 which I had written to my personal account to reimburse for an end of campaign dinner with my campaign manager, her husband (a campaign volunteer) and my daughter (also a campaign volunteer).

This check caused my campaign account to overdraw in the amount of \$3.75. Then on November 20 a check I had written to the newspaper for a campaign ad posted causing the account to overdraw, adding to the \$3.75 shortage. The account was then overdrawn in the amount of \$29.85. The bank also assessed an overdraft fee of \$25.00 which caused a total account overdraw of \$54.85.

When the bank notified me of the overdraw I reimbursed them from my personal account in the amount of the \$54.85. Now my campaign account balance is \$0.00.

My treasurer left the campaign in September due to illness and I failed in keeping my finances accurately after that. I apologize for the shortcoming.

I am attaching a copy of the account from the bank.

Sincerely,

Frederick Austin

Wayne, Jonathan

From: ouray68@yahoo.com
Sent: Friday, January 16, 2009 2:15 PM
To: Wayne, Jonathan
Subject: Re: My e-mail address

mr wayne, this letter is in reply to our communication of 1-15-2008. i feel that the fine for over spending during my campaign is excessive. this is based on 2 reasons. first the fine is more than the amount i over spent. second i only over spent partly because of the large amount of matching funds placed in my account which later i had to return. this made my accounting some what difficult. i am apealing to the commission to reconsider my fine amount and whether it should be imposed. thank you for your time and consideration.

sincerely,
frederick austin

--- On **Thu, 1/15/09, Wayne, Jonathan** <Jonathan.Wayne@maine.gov> wrote:

From: Wayne, Jonathan <Jonathan.Wayne@maine.gov>
Subject: My e-mail address
To: ouray68@yahoo.com
Date: Thursday, January 15, 2009, 6:01 PM

Jonathan.Wayne@maine.gov.